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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,535

03/15/2004

Sujal M. Patel

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02/23/2010

GRAYBEAL JACKSON - REAL NETWORKS

GRAYBEAL JACKSON LLP

400 - 108TH AVENUE NE

SUITE 700

BELLEVUE, WA 98004

EXAMINER

NGO, NGUYEN HOANG

ART UNIT

PAPER NUMBER

2473

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/800,535	<b>Applicant(s)</b> PATEL ET AL.	
	<b>Examiner</b> NGUYEN NGO	<b>Art Unit</b> 2473	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 16-24 and 53-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16-24, 53, 55-62, 64 and 65 is/are rejected.
- 7) ☒ Claim(s) 14, 55, 63, 66 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This communication is in response to the RCE of 1/25/2010. All changes made to the Claims have been entered. Accordingly, Claims 1-14, 16-24, 53-66 are currently pending in the application.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 3, 4, 6, 7, 8, 9, 11, 16, 17, 18, 19, 20, 21, 22, 24, 57, 58, 59, are rejected under 35 U.S.C. 102(b) as being anticipated by Kim (US 5519689).

Regarding claim 1, 6, 7, 16, 19, 20, 59, Kim discloses a method of determining network conditions,

the method comprising:

determining a first time associated with receipt of a first data packet (previous cell arrival time, col13 lines 5-20 and figure 8 and 9);

determining a second time associated with receipt of a second data packet sent immediately after the first data packet (current cell arrival time, col13 lines 5-20 and figure 8 and 9);

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determining a size of the second data packet (number of cells within a window time, col13 lines 18-25); and

calculating a transmission bandwidth by dividing the size of the second data packet by a function of a difference between the first and second times (usage bandwidth during window time, col13 lines 25-35 and col17 lines 20-40 and figure 8 and 9).

Regarding claim 2, 11, 24, 57, 58, Kim discloses the method of claim 1-further comprising:

reading a header in the first data packet, wherein the header includes data indicating the second data packet will be transmitted immediately after transmission of the first data packet to make the first and second data packets back-to-back data packets (col12 lines 19-30 and figure 7 and 11).

Regarding claim 3, 8, 17, 21, Kim discloses additionally comprising reporting to a server computer the transmission bandwidth (traffic control block, col7 lines 1-20 and figures 2 and 3).

Regarding claim 4, 9, 18, 22, Kim discloses wherein the data packets are two of a plurality of data packets that collectively comprise a portion of a media presentation rendered to a user (traffic flow of a stream of cells in a user-network in which has a traffic class, col1 lines 15-25 and col10 lines 1-25)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 5, 10, 12, 13, 23, 53, 54, 56, 60, 61, 62, 64, 65, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (US 5519689), in view of Burns et al. (US 6449291).

Regarding claim 5, 10, 12, 13, 23, 53, 54, 56, 60, 61, 62, 64, 65, Kim fails to specifically disclose of using a correction factor for the window time involving the difference between the first and second times. However it is well known in the art of clock error in which the time of reception of packets are based on. In a similar field of endeavor, Burns discloses of such a concept as Burns discloses of a correction factor which is an offset value representative of the amount of clock error (impreciseness of time, abstract). It would have thus been obvious to a person skilled in the art to incorporate the use of a correction factor which represents clock error times as disclosed by Burns

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into the function of the difference between the first and second times of the received packets as disclosed by Kim, in order to efficiently and correctly determine the proper bandwidth usage despite clock errors. It would have further been obvious to have the correction factor be selected from at least two durations as a function of the size of the packet, as it is well known that a longer length packet will have a longer time interval than a shorter length packet, and thus having a better threshold for clock error, and thus having a smaller correction factor. Similar rationale is applied to a shorter length packet, as clock error impacts a shorter length packet more.

### ***Allowable Subject Matter***

6. Claims 14, 55, 63, 66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Luijten et al. (US 7103050)

9. Blanco et al. (US 6249530)

10. Mishra et al. (US 5805599)

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN NGO whose telephone number is (571)272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang Yao can be reached on (571)272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. N./

Examiner, Art Unit 2473

/KWANG B. YAO/

Supervisory Patent Examiner, Art Unit 2473